

SENATE BILL 532

D3, D4, E2

9lr1634

By: **Senator Zirkin**

Introduced and read first time: February 5, 2009

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Peace Orders and Protective Orders – Service of Process on Nonresidents**

3 FOR the purpose of requiring that, whenever a District Court commissioner issues an
4 interim peace order, the commissioner, at the option of the petitioner,
5 immediately forward a copy of a certain petition and the order to a private
6 process server for service on the respondent; authorizing service of a certain
7 petition and interim peace order on a nonresident respondent by private
8 process; requiring a private process server, immediately on receipt of a certain
9 petition and peace order, to take certain steps; requiring a private process
10 server to serve immediately a temporary peace order on the respondent under
11 certain circumstances; authorizing service of a certain petition and temporary
12 peace order on a nonresident respondent by private process; providing that a
13 certain petitioner is required to pay costs for the service by private process of
14 certain papers relating to protective orders; requiring that whenever a
15 commissioner issues an interim protective order, the commissioner, at the
16 option of the petitioner, immediately forward a copy of a certain petition and the
17 order to a private process server for service on the respondent; authorizing
18 service of a certain petition and interim protective order on a nonresident
19 respondent by private process; requiring a private process server, immediately
20 on receipt of a certain petition and protective order, to take certain steps;
21 requiring a private process server to serve immediately a temporary protective
22 order on the respondent under certain circumstances; providing that a certain
23 petitioner is required to pay costs for the service by private process of temporary
24 protective orders; and generally relating to peace orders and protective orders.

25 BY repealing and reenacting, with amendments,
26 Article – Courts and Judicial Proceedings
27 Section 3–1503.1(e) and (f) and 3–1504(b)
28 Annotated Code of Maryland
29 (2006 Replacement Volume and 2008 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, without amendments,
 2 Article – Courts and Judicial Proceedings
 3 Section 3–1504(d) and 3–1505(c) and (e)
 4 Annotated Code of Maryland
 5 (2006 Replacement Volume and 2008 Supplement)

6 BY repealing and reenacting, with amendments,
 7 Article – Family Law
 8 Section 4–504(c), 4–504.1(e) and (f), and 4–505(b)
 9 Annotated Code of Maryland
 10 (2006 Replacement Volume and 2008 Supplement)

11 BY repealing and reenacting, without amendments,
 12 Article – Family Law
 13 Section 4–505(d) and 4–506(c) and (g)
 14 Annotated Code of Maryland
 15 (2006 Replacement Volume and 2008 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – Courts and Judicial Proceedings**

19 3–1503.1.

20 (e) (1) Whenever a commissioner issues an interim peace order, the
 21 commissioner shall:

22 [(1)] (I) Immediately forward a copy of the petition and interim
 23 peace order to the appropriate law enforcement agency **OR, AT THE OPTION OF THE**
 24 **PETITIONER, A PRIVATE PROCESS SERVER** for service on the respondent; and

25 [(2)] (II) Before the hearing scheduled in the interim peace order,
 26 transfer the case file and the return of service, if any, to the Office of the District Court
 27 Clerk.

28 (2) **SERVICE OF THE PETITION AND INTERIM PEACE ORDER ON A**
 29 **NONRESIDENT RESPONDENT MAY BE MADE BY PRIVATE PROCESS.**

30 (f) A law enforcement officer **OR PRIVATE PROCESS SERVER** shall:

31 (1) Immediately on receipt of a petition and interim peace order, serve
 32 them on the respondent named in the order; and

33 (2) Immediately after service, make a return of service to the
 34 commissioner's office or, if the Office of the District Court Clerk is open for business, to
 35 the clerk.

1 3-1504.

2 (b) (1) Except as provided in paragraph (2) of this subsection, a law
3 enforcement officer **OR, AT THE OPTION OF THE PETITIONER, A PRIVATE PROCESS**
4 **SERVER** immediately shall serve the temporary peace order on the respondent.

5 (2) A respondent who has been served with an interim peace order
6 under § 3-1503.1 of this subtitle shall be served with the temporary peace order in
7 open court or, if the respondent is not present at the temporary peace order hearing,
8 by first-class mail at the respondent's last known address.

9 **(3) SERVICE OF THE TEMPORARY PEACE ORDER ON A**
10 **NONRESIDENT RESPONDENT MAY BE MADE BY PRIVATE PROCESS.**

11 (d) The judge may proceed with a final peace order hearing instead of a
12 temporary peace order hearing if:

13 (1) (i) The respondent appears at the hearing;

14 (ii) The respondent has been served with an interim peace
15 order; or

16 (iii) The court otherwise has personal jurisdiction over the
17 respondent; and

18 (2) The petitioner and the respondent expressly consent to waive the
19 temporary peace order hearing.

20 3-1505.

21 (c) (1) If the respondent appears for the final peace order hearing, has
22 been served with an interim peace order or a temporary peace order, or the court
23 otherwise has personal jurisdiction over the respondent, the judge:

24 (i) May proceed with the final peace order hearing; and

25 (ii) If the judge finds by clear and convincing evidence that the
26 respondent has committed, and is likely to commit in the future, an act specified in §
27 3-1503(a) of this subtitle against the petitioner, or if the respondent consents to the
28 entry of a peace order, the court may issue a final peace order to protect the petitioner.

29 (2) A final peace order may be issued only to an individual who has
30 filed a petition under § 3-1503 of this subtitle.

31 (3) In cases where both parties file a petition under § 3-1503 of this
32 subtitle, the judge may issue mutual peace orders if the judge finds by clear and

1 convincing evidence that each party has committed, and is likely to commit in the
2 future, an act specified in § 3–1503(a) of this subtitle against the other party.

3 (e) (1) A copy of the final peace order shall be served on the petitioner, the
4 respondent, the appropriate law enforcement agency, and any other person the court
5 determines is appropriate, in open court or, if the person is not present at the final
6 peace order hearing, by first-class mail to the person's last known address.

7 (2) (i) A copy of the final peace order served on the respondent in
8 accordance with paragraph (1) of this subsection constitutes actual notice to the
9 respondent of the contents of the final peace order.

10 (ii) Service is complete upon mailing.

11 Article – Family Law

12 4–504.

13 (c) The petitioner may not be required to pay a filing fee or costs for the
14 issuance or, **UNLESS DONE BY PRIVATE PROCESS SERVER**, service of:

15 (1) an interim protective order;

16 (2) a temporary protective order;

17 (3) a final protective order; or

18 (4) a witness subpoena.

19 4–504.1.

20 (e) (1) Whenever a commissioner issues an interim protective order, the
21 commissioner shall:

22 [(1)] (I) immediately forward a copy of the petition and interim
23 protective order to the appropriate law enforcement agency **OR, AT THE OPTION OF**
24 **THE PETITIONER, A PRIVATE PROCESS SERVER** for service on the respondent; and

25 [(2)] (II) before the hearing scheduled in the interim protective order,
26 transfer the case file and the return of service, if any, to the Office of the District Court
27 Clerk.

28 (2) **SERVICE OF THE PETITION AND INTERIM PROTECTIVE ORDER**
29 **ON A NONRESIDENT RESPONDENT MAY BE MADE BY PRIVATE PROCESS.**

30 (f) A law enforcement officer **OR PRIVATE PROCESS SERVER** shall:

1 (1) immediately on receipt of a petition and interim protective order,
2 serve them on the respondent named in the order; and

3 (2) immediately after service, make a return of service to the
4 commissioner's office or, if the Office of the District Court Clerk is open for business, to
5 the Clerk.

6 4-505.

7 (b) (1) Except as provided in paragraph (2) of this subsection, a law
8 enforcement officer **OR PRIVATE PROCESS SERVER** immediately shall serve the
9 temporary protective order on the alleged abuser under this section.

10 (2) A respondent who has been served with an interim protective order
11 under § 4-504.1 of this subtitle shall be served with the temporary protective order in
12 open court or, if the respondent is not present at the temporary protective order
13 hearing, by first-class mail at the respondent's last known address.

14 (3) There shall be no cost to the petitioner for service of the temporary
15 protective order, **UNLESS SERVICE IS BY A PRIVATE PROCESS SERVER.**

16 (d) The judge may proceed with a final protective order hearing instead of a
17 temporary protective order hearing, if:

18 (1) (i) the respondent appears at the hearing;

19 (ii) the respondent has been served with an interim protective
20 order; or

21 (iii) the court otherwise has personal jurisdiction over the
22 respondent; and

23 (2) the petitioner and the respondent expressly consent to waive the
24 temporary protective order hearing.

25 4-506.

26 (c) (1) If the respondent appears before the court at a protective order
27 hearing or has been served with an interim or temporary protective order, or the court
28 otherwise has personal jurisdiction over the respondent, the judge:

29 (i) may proceed with the final protective order hearing; and

30 (ii) if the judge finds by clear and convincing evidence that the
31 alleged abuse has occurred, or if the respondent consents to the entry of a protective
32 order, the judge may grant a final protective order to protect any person eligible for
33 relief from abuse.

1 (2) A final protective order may be issued only to a person who has
2 filed a petition under § 4–504 of this subtitle.

3 (3) (i) Subject to the provisions of subparagraph (ii) of this
4 paragraph, in cases where both parties file a petition under § 4–504 of this subtitle,
5 the judge may issue mutual protective orders if the judge finds by clear and convincing
6 evidence that mutual abuse has occurred.

7 (ii) The judge may issue mutual final protective orders only if
8 the judge makes a detailed finding of fact that:

- 9 1. both parties acted primarily as aggressors; and
10 2. neither party acted primarily in self–defense.

11 (g) (1) A copy of the final protective order shall be served on the
12 petitioner, the respondent, any affected person eligible for relief, the appropriate law
13 enforcement agency, and any other person the judge determines is appropriate, in
14 open court or, if the person is not present at the final protective order hearing, by
15 first–class mail to the person’s last known address.

16 (2) A copy of the final protective order served on the respondent in
17 accordance with paragraph (1) of this subsection constitutes actual notice to the
18 respondent of the contents of the final protective order. Service is complete upon
19 mailing.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2009.